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September 28, 2005

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Christina Wise, Property Tax Director
Stark County Auditor's Office
110 Central Plaza, South, Suite 220
Canton, Ohio 44702-1410

Re: Refund of taxes to property owner
Our File No. M101.00266

Dear Ms. Wise:

I have before me your e-mail letter of August 11, 2005 in which you have posed several questions concerning the payment of tax refunds to taxpayers whose payments have been found to be in excess of the amount lawfully due. Your letter contains eight questions in three numbered paragraphs. You have also included references to R.C. §§ 319.35 and 319.36. We will refer especially to R.C. § 319.36 in our effort to provide appropriate answers and assume that you have the statute available to you.

Your questions begin by stating that "Refunds can only be given for clerical errors as defined by ORC section 319.35" followed by the first three questions.

Q. 1. Can refunds go back five years?

A. There is no time limit expressed in R.C. § 319.36 as to the number of years that an erroneous charge of a tax, assessment, recoupment due to a clerical error may be refunded. The five year idea comes from R.C. § 319.40 which indicates that omitted taxes shall be collected back as much as five years.

Inherent in R.C. § 319.36 is the notion that multiple years of erroneous charges may be refunded as noted from this portion of the text:

If, at any time, the auditor discovers that erroneous taxes, assessments, or charges have been charged or collected *in previous years as a result of a clerical error*, except for public utility taxes covered under section 5727.471 of the Revised Code, the auditor shall call the attention of the county board of revision to such charge or collection at a regular or special session of the board. If the board finds that taxes, assessments, or charges have been erroneously charged or collected, as a result of a clerical error, it shall certify that finding to the county auditor.

The implication of this language is that the board of revision can approve refunds of taxes overpaid due to clerical error for multiple years. Five years is a reasonable

number corresponding with both the reappraisal cycle (the previous five years together with the current year) and the provision for collecting omitted taxes. There is, however, no authority known to us which either prohibits or otherwise indicates that the board of revision would be considered to have abused its discretion in allowing refunds for a longer period. You should be aware, on the other hand, that, in the event the auditor and board of revision decline to find a clerical error, a taxpayer cannot recover for the illegal levy or collection of taxes and assessments unless the action is brought within one year after the taxes or assessments are collected. R.C. § 2723.01

Q. 1(b) Do all refunds for clerical errors have to be presented to the Board of Revision and approved?

A. No. For clerical errors discovered in the current year, the statute provides that the county auditor shall give the person so charged a certificate to that effect to be presented to the treasurer, who shall deduct the amount from such tax, assessment, or charge. The board of revision is not involved in this decision; only those decisions concerning refunds due to clerical errors in previous years as discussed above.

Q. 1(c) If a clerical error is the reason for the refund, should interest be given per code section 319.36 (E) and (F)?

A. Yes. The auditor has several options available to him as set forth in R.C. § 319.36(B) which states:

(B) In the event of erroneous charges that have been collected, do one of the following:

(1) Draw a warrant on the treasurer in favor of the person paying the erroneous charges, or the personal representative of the person paying the erroneous charges, for the full amount of the taxes, assessments so charged and collected *with any applicable interest* thereon as prescribed by division (E) of this section or by section 5719.041 of the Revised Code;

(2) Refund a portion of the overpayment *and any interest* and prorate the remaining balance as a credit against future taxes that may be charged to the person;

(3) Prorate the full amount of the overpayment *and any interest* as a credit against future taxes that may be charged to the person;

(4) Enter into a written undertaking with the person providing for refund of the overpayment in installments. The terms of such an undertaking shall include the amount payable and the due date of each installment, including the due date of the final payment, which

shall not be later than two years after the due date of the first installment. Notwithstanding section 5719.041 of the Revised Code to the contrary, *any applicable interest on the overpayment allowed under that section shall not accrue beyond the day on which the undertaking is entered into.* (Emphasis added.)

All of these forms of refunds are based on the concept that a calculable clerical error has occurred which can be corrected on the basis of evidence as you mentioned in your letter. Interest accrues no matter what form of refund the auditor chooses.

Q. 2(a) If a Board of Revision case is a clerical error, can the Board okay the refund for previous years?

A. See the answer to Q 1(a), above.

Q. 2(b) If a Board of Revision case is fundamental in nature, no refund of previous years can be issued?(sic)

A. The disposition of Board of Revision cases is controlled by another statute altogether. Revised Code § 5715.22 specifies how the auditor is to credit overpaid taxes when a board of revision case results in a lower valuation for the period of time complained of.

If upon consideration of any complaint against the valuation or assessment of real property filed under section 5715.19 of the Revised Code, or any appeal from the determination on such complaint, it is found that the amount of taxes, assessments, or recoupment charges paid for the year to which the complaint relates was in excess of the amount due, then, whether or not the payment of said taxes, assessments, or charges was made under protest or duress, the county auditor shall, within thirty days after the certification to him of the final action upon such complaint or appeal, credit the amount of such overpayment upon the amount of any taxes, assessments, or charges then due from the person having made such overpayment, and at the next or any succeeding settlement the amount of any such credit shall be deducted from the amounts of any taxes, assessments, or charges distributable to the county or any taxing unit therein which has received the benefit of the taxes, assessments, or charges previously overpaid, in proportion to the benefits previously received. If after such credit has been made, there remains any balance of such overpayment, or if there are no taxes, assessments, or charges due from such person, upon application of the person overpaying such taxes the auditor shall forthwith draw a warrant on the county treasurer in favor of the person who has made such overpayment for the amount of such balance. The treasurer shall pay such warrant from the general

revenue fund of the county. If there is insufficient money in said general revenue fund to make such payment, the treasurer shall pay such warrant out of any undivided tax funds thereafter received by him for distribution to any county or any taxing unit therein which has received the benefit of the taxes, assessments, or charges overpaid, in proportion to the benefits previously received, and the amount paid from the undivided tax funds shall be deducted from the money otherwise distributable to such county or other taxing unit of the county at the next or any succeeding settlement. At the next or any succeeding settlement after the refunding of such taxes, assessments, or charges, the treasurer shall reimburse the general revenue fund of the county for any payment made from such fund by deducting the amount of such payment from the money otherwise distributable to the county or other taxing unit in the county which has received the benefit of the taxes, assessments, or charges overpaid, in proportion to the benefits previously received.

Payment of interest is not provided for in this statute.

Q. 3(a) If we are allowed to refund previous years, how technical of a time line is this evidence?

A. The evidence should be sufficient to satisfy the auditor or board of revision that the claim is valid. If, on the basis of evidence created today, it can be shown that a certain state of facts existed five years ago which warrants a refund, the auditor and the board of revision may, in their sound discretion give that evidence such credence as it deserves. They need not give more weight to older or newer forms of evidence, but must determine the credibility of each item of evidence and attribute to each the weight it deserves.

Q. 3(b) Does the evidence have to be in existence in these offices back five years or can it be something presented to us currently? For example, if a court order today says our record is wrong and we define it as clerical based on the availability of this document, can we refund five years based on this order even though it wasn't in our records previously?

A. No. See above. With respect to a valid court order, where your functions might be merely ministerial, you would not question the order, but simply carry it out. The courts, however, generally cannot control the discretion of the auditor and board of revision in the exercise of their duties to assess the value of real property in the county.

Q. 3(c) Or, do we need evidence from a document such as a deed that would have been recorded here and available during the past five years.

A. The auditor should be seeking the best available evidence in sufficient quantities to support a decision based on that evidence. Deeds, contracts,

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affidavits, calculations, in-house notes and other like forms of information may be considered by the auditor and the board of revision in determining whether a clerical error has been made, and hence, a refund due.

I trust this answers your questions. If I may be of further service, do not hesitate to write or call.

Very truly yours,

A handwritten signature in cursive script, reading "David M. Bridenstine". The signature is written in dark ink and is positioned above the printed name and title.

David M. Bridenstine
Assistant Prosecuting Attorney

DMB:dmb

Encl.